



LAURENCE V RUTKOVSKY SHARON L FELDMAN  
16 GLEN PK RD  
PURCHASE NY 105771904

May 16, 2018

INSURED: LAURENCE RUTKOVSKY  
DATE OF LOSS: May 21, 2016  
CLAIM NUMBER: 0414356832

PHONE NUMBER: 866-322-4754  
FAX NUMBER: 866-655-7605  
OFFICE HOURS:

Dear LAURENCE V RUTKOVSKY and SHARON L FELDMAN,

Allstate already has paid, at an actual cash value basis, your claim under the above-referenced Allstate Homeowner's Policy (the "Policy") related to the fire damage to your home located at 16 Glenn Park Road in Purchase, New York. On May 8, 2018, you (Mr. Rutkovsky and Ms. Feldman) presented a further claim for an additional payment on a replacement cost basis. You assert that your purchase of a condominium located at 225 Stanley Avenue, Unit 222, Mamaroneck, New York, which you intend to make your primary residence (at least temporarily), would constitute a replacement of your fire-damaged 16 Glenn Park Road home and entitle you to a replacement cost coverage payment under the Policy.

After giving this matter consideration, Allstate regrets to inform you that it denies your claim for a replacement cost coverage payment because the proposed condominium purchase would not constitute a bona fide replacement of the 16 Glenn Park Road home based on the information made available to us. The facts you presented us with on May 8th, 2018 are no different from those on which we previously relied in support of our coverage position asserted on April 16, 2018, other than you have now actually purchased the condominium.

As we advised you on April 16, the Policy provides in pertinent part as follows:

Section I Conditions

5. How We Pay For A Loss

Under Coverage A—Dwelling Protection, Coverage B—Other Structures Protection and Coverage C—Personal Property Protection, payment for covered loss will be by one or more of the following methods:

b) Actual Cash Value

If you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the limit of liability shown on the Policy Declarations for the coverage that applies to the damaged, destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c, and paragraph d if applicable, if you repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

\* \* \*

We will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a building structure damaged by a covered loss. Building Structure Reimbursement will not exceed the smallest of the following amounts:

i) the replacement cost of the part(s) of the building structure(s) for like kind and quality construction, for similar use, on the same premises;

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- 2) the amount actually and necessarily spent to repair or replace the damaged building structure(s) with like kind and quality construction, for similar use, on the same premises; or
- 3) the limit of liability applicable to the building structure as shown on the Policy Declarations for Coverage A—Dwelling Protection or Coverage B—Other Structures Protection. . .

\* \* \*

If you replace the damaged building structure(s) at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s). Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to building structures and the smallest of 1), 2) or 3) above.

\* \* \*

#### Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

New York

Amendatory Endorsement -AP4729

This endorsement amends your Deluxe Homeowners Policy and is in addition to all other amendatory endorsements which apply to this policy.

\* \* \*

V. In Section I—Conditions, under item 5, How We Pay For A Loss, the following changes are made:

- 1) Sub-item b) Actual Cash Value is replaced by the following:  
b) Actual Cash Value

If you do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the limit of liability shown on the Policy Declarations for the coverage that applies to the damaged, destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c, and paragraph d if applicable, if you repair or replace the damaged, destroyed or stolen covered property within two years after the date of the loss.

- 2) Under sub-item c) Building Structure Reimbursement, the first paragraph is replaced by the following:

c) Building Structure Reimbursement.

Under Coverage A—Dwelling Protection and Coverage B—Other Structures Protection, we will make additional payment to reimburse you for cost in excess of actual cash value if you repair, rebuild or replace damaged, destroyed or stolen covered property within two years after the date of the loss. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a building structure damaged by a covered loss. This additional payment shall not include any amounts which may be paid or payable under Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Loss, and shall not be payable for any losses excluded in Section I—Your Property, under Losses We Do Not Cover Under Coverages A and B, item 24, unless mold, fungus, wet rot, dry rot or bacteria ensues from a covered fire or lightning loss.

\* \* \*

As provided in the Policy, you may make a claim for additional payment if you actually repair or replace the damaged property within two years after the date of loss, which requirement Allstate intends to enforce and does not waive. Allstate would accept a building permit and a signed construction contract as proof of replacement within the two year time period from the date of the loss.

For replacement valuation to apply under the Policy, the replacement building needs to be a bona fide replacement of the 16 Glenn Park Road home with consideration given to the ordinary and generally accepted meaning of "replace." In other words, the replacement building should take the place of and serve the same function as the original.

Based on our investigation into this claim and the information you have presented to us, the proposed condominium purchase would not serve as a true replacement of the 16 Glenn Park Road home.

Allstate expressly continues to reserve all of its rights, privileges, and defenses under the Policy and at law, regardless of whether specifically set forth herein.

We caution you that any coverage decision is based on documents and information that have been provided to us for our review. We urge you to submit any additional documentation or information that is relevant to issues set forth above should additional information become available. We strongly suggest you review this matter with an attorney, at your expense, and have your attorney take the necessary actions to protect your interests in this matter.

Should you wish to take this matter up with the New York State Department of Financial Services, you may file with the department either on its website at <http://www.dfs.ny.gov/consumer/filecomplaint.htm> or you may write to or visit the Consumer Assistant Unit, Financial Frauds and Consumer Protection Division, New York State Department of Financial Services, at 1 State Street, New York, NY 10004; 1 Commerce Plaza, Albany, New York 12257; 163B Mineola Blvd, Mineola, NY 11501; or Walter J. Mahoney office building, 65 Court Street, Buffalo, NY 14202.

**New York Regulation**

New York Insurance Regulations require us to advise you that in the event you wish to contest this denial in litigation, your insurance Policy requires that any suit or action must be brought within two years of the inception of the date of loss or damage.

**We're Here to Help You**

I hope you understand the basis of this decision. Please call us at the number below and refer to our claim number if you wish to discuss any aspect of this case, including this letter.

Certified Mail Return Receipt Requested

cc: Eric Kreuter (via email)

Sincerely,

*DANIEL CIPOLLONE*

DANIEL CIPOLLONE  
866-322-4754 Ext. 1748547  
Allstate Insurance Company